

# Guide to depositions

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Learn what depositions are and what you should know if you're going to be deposed. This tells you about depositions in both civil and criminal cases.

## 1. General information

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### What is a deposition?

A deposition is a face-to-face session where one party asks another party or a witness various questions related to a court case or conflict. The goal of a deposition is to discover all the facts that could help or hurt a case. Depositions can be used at trial or in negotiations to try to settle the case. The answers you give in a deposition could become evidence in court or in negotiations settlements.

Depositions can happen in either criminal or civil cases. Depositions will happen differently depending on whether the deposition is for a criminal case or a civil case.

Learn tips about answering deposition questions in the final chapter of this guide.

### Some words you should know

If you're the person answering the questions, you're being "**deposed**." You're the "**deponent**."

A **witness** testifies under oath at a deposition or trial. A witness usually can only give firsthand or expert testimony. **Firsthand** means you experienced or saw it

yourself.

You **testify** in a deposition. You swear under oath to tell the truth just like testifying in a courtroom. The deposition won't usually happen in a courthouse but it's still treated like when you testify in court.

## Do I have to pay for a deposition?

No. The person asking you to do the deposition pays for the deposition. If you can't afford to attend the deposition because of travel costs, tell that to the lawyer who's scheduling the deposition. They should help pay for you to get there. If you can't afford to miss work for a deposition, ask the lawyer if they can schedule it on your days off or when you're not working.

## 2. Privacy

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### Are depositions recorded?

Yes, usually. But you should get some notice ahead of time that it will be video recorded. There will **always** be a transcript made during the deposition, like a court reporter in court. But typically, there will also be a video recording. The goal of the deposition is to make a formal record of what your answers to the questions you're asked.

### Are depositions part of court records?

Yes, usually. They will often become part of court records once submitted as evidence to the court. Some depositions are automatically entered as court records.

### ()Can I keep my deposition answers out of the public court records?

You can try. If you must give private or privileged information in a deposition, you can ask the court for a **protective order** keeping that information from being available to the public. Protective orders can also limit the questions so that only very specific information can be about privileged topics.

To get a protective order, you must first ask for a postponement (called a continuance) of the deposition and then quickly make a written motion for the protective order and serve your motion on the other parties. Try to get a lawyer if you want to do this. It can be complicated.

### **3. Accessibility**

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#### **()What if I need an interpreter or translations during the deposition?**

You should ask for an interpreter as soon as you're told you'll be deposed. Tell the party that asked for your deposition that you need language help. Ask for the interpreter that you need for the deposition itself, and ask for one for any communication before or after. Ask for translations of any written materials or emails about the deposition.

Depositions can last up to 7 hours. You may need to plan for 2 interpreters during the deposition itself, because they can take so long.

The people deposing you should pay for the interpreters and translations.

#### **What if I'll have trouble attending or participating fully in the deposition?**

You should tell the person who calls you to schedule the deposition about what accommodations you'll need. Ask for what you need so that you can participate fully in the deposition process.

You'll need to be able to communicate back and forth with a person in a question-and-answer way that will be recorded in some manner. You'll usually also have to be able to sit or be in one room for many hours at a time. Breaks will be limited and not easy to plan. If this impacts you, let them know as soon as possible so everyone can plan accordingly.

#### **Where do depositions take place?**

A deposition usually takes place at a lawyer's office or some other mutually agreed place. A lawyer who wants to depose you will usually contact you to

choose a date and time.

When the lawyer contacts you to schedule the deposition, make sure to tell them or remind them of:

- any interpreter or accessibility needs you have.
- If you can't use stairs, make sure the lawyer knows to have the deposition somewhere you can access.
- If you use ASL or need an interpreter for another language, make sure the lawyer knows you'll need two interpreters for the deposition day.
- Remind the lawyer to send the notice to your correct address, and remind the lawyer if you need translations of the deposition notice.

Once you agree on a date, the party scheduling the deposition must give you **5 days'** written notice of the deposition date, not counting the day you get the notice, Saturday, Sunday, or holidays. The party doing the deposition can mail you the notice or deliver it in a way that should give you actual notice of the deposition. If you don't get enough notice of the deposition, you can ask the other party or their lawyer to reschedule it to a later date so you have more time to prepare for it.

## 4. At deposition

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### What happens at a deposition?

The lawyer for the party who scheduled the deposition asks the deponent questions. The deponent's lawyer, if they have one, "defends" the deponent by objecting to certain questions and instructing the deponent when to answer and when not to. If you're the deponent, and you don't have a lawyer, you can make objections yourself.

Generally, the opposing parties don't speak directly to each other. Lawyers for each party can speak to each other about such things as dates and deadlines. During the deposition testimony, a lawyer will only speak directly to an opposing party by asking questions about the facts of a case.

Lawyers and parties should behave at depositions the same as if they were in court

[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr30](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr30)  
. You should be polite and respectful just as if a judge were there.

## Who will be at the deposition?

- You (the deponent) and any interpreters you need
- The parties to the case (if you're not a party)
- The parties' lawyers
- The court reporter

The **court reporter** writes down (transcribes to create a record of the deposition) the conversation between the lawyer and you. You or the other party's lawyer can use the transcript of the deposition as evidence at trial. This means that the answers you give in a deposition could become evidence at trial.

The court reporter will give you the transcript to read. You can make corrections to it. After the court reporter makes any corrections, you sign the transcript. You can use both the original and corrected transcript as evidence in any court actions.

If you want a copy of the transcript, you must pay the court reporter for it.

If you're a party to the case, you can use the deposition transcript at trial to “**impeach**” a witness. “Impeach” means that a witness isn't saying something credible or truthful about a specific question. If a witness gives an answer at trial different from their answer at the deposition, you can quote the deposition to try to show the witness is lying. If you were deposed, and you give a different answer at trial to a question asked of you in a deposition, you can be impeached.

## 5. Deposition questions

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### What can I be asked about in a deposition?

You can be asked for any information even slightly related to the case. Here are some **examples**:

- Your knowledge about the facts of the case
- Related events you've witnessed
- Names of other witnesses or parties

- Where documents or other evidence are and what they say
- Your personal or professional background

You must answer the questions honestly, unless you object to the question. Even then, you might still have to answer the question. The court reporter puts the objection in the deposition transcript. Then you can raise the objection again at trial.

## ()When should I object to a question?

You should **object to** questions that are

- Unclear
- More than one question in a sentence (called compound questions)
- Confusing
- The questioner just arguing with you (called argumentative)
- Asking for speculation

Such questions could cause you to say something you don't mean to say. It's better to have the lawyer ask a clear, narrow question. Ask the lawyer to put the question differently (to rephrase the question). Ask the lawyer to ask one single question at a time only.

You should also object to questions asking you to discuss information you've learned through a confidential relationship, called privileged information (<http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>). This includes

- Conversations between spouses
- Conversations between lawyers and clients, including lawyers' advice
- Conversations between doctors and patients
- Conversations between victims and domestic violence advocates
- Confessions made to clergy or priests

**You don't have to answer such questions.** Courts recognize a right to privacy.

Information about sexuality, health, or personal religious belief can also be privileged. Some of these matters **can be asked** about if they are relevant in a deposition. Try to talk to a lawyer if you're worried that you'll get such questions at a deposition.

Courts also try to protect the privacy of witnesses who aren't parties in the case. If you're a witness in case or a crime, ask the lawyer or prosecutor about your

privacy concerns before the deposition.

You can object to questions that are **improper** and meant only to embarrass or annoy you. When you object to such a question, you must say why you're objecting. The deposing party must then explain how the question relates to the case. If you can't agree if the question is acceptable, ask your judge to resolve the matter. Usually, the deposition will stop until you reach agreement, or the judge makes a decision.

You can make a motion to limit or end the deposition ([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CR&ruleid=supcr30](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CR&ruleid=supcr30)) if a party is using the deposition to harass, annoy, or embarrass the deponent. If you're worried that the deposition questions or issues could be used to harass you, you should try to talk to a lawyer as soon as you know you're going to be deposed.

## 6. Civil cases

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### What do I need to know about depositions for a civil case?

In the months before a civil court trial, there's a process called "discovery." All the parties in a court case try to find out the facts that are important to the case. Depositions are part of this discovery process. You might be deposed by one side or both sides in a case. You might be deposed more than once.

You'll usually receive a subpoena to be deposed. A subpoena is a court form that demands you attend court, attend a deposition, or turn over a document. Usually if you get a subpoena, that means you must attend the deposition or get in trouble with the court. You might face a contempt of court charge or have to pay for the fees related to the deposition you failed to appear for. Even if you don't get a subpoena, you should still attend a deposition if you're asked to appear at one.

### What if I don't want to be deposed for a civil case?

You might have to, even if you don't want to. There can be serious consequences if you ignore a subpoena for a deposition. You could have to pay damages or fees (<https://app.leg.wa.gov/RCW/default.aspx?cite=5.56.060>). You can try to get the deposition record limited if you're worried about private information that could be asked of you at the deposition. If you're worried about the deposition request and

don't want to be deposed, you should try to talk to lawyer.

## 7. Criminal cases

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### How are depositions in criminal cases different?

Criminal cases don't have depositions as often as civil cases do. But they do happen sometimes. Usually, depositions happen in criminal cases when a witness to a crime is deposed about what they saw. Either the defense attorney for the Defendant or the Prosecutor of the crime could depose you if you were a witness to a crime.

Sometimes a deposition in a criminal matter will happen because it's expected that the trial will take a long time to schedule or complete. So, you might have to **both** be deposed early on and then **also** testify at trial later. Sometimes your deposition can be used at trial instead of you having to be there.

### Can I refuse to testify at a criminal case deposition?

If you won't testify at a criminal trial, or you refuse to discuss the case with the prosecuting attorney or defense attorney, that attorney can ask the judge to order you to sit for a deposition, and to bring specific things to the deposition. The lawyer must prove that your testimony is important to the case and taking your deposition will prevent a failure of justice.

#### **The judge may not order your deposition if both these are true:**

1. Answering deposition questions may put you at real risk of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment.
2. The negative effect of such a result outweighs the usefulness of your answers to the lawyer's case.

**The judge can allow the deposition and still protect you.** The judge can put conditions on the order granting the deposition. You can ask for a protective court order limiting or delaying your deposition. If you object to any of your deposition answers becoming a public record due to any risks to you, you can ask the judge to order certain information be left out of the deposition record. Be prepared to talk

to the judge about why being involved in the deposition puts you at some kind of risk.

## **Where can I read more about depositions in criminal cases?**

Read more about criminal case depositions in the Washington Criminal Court Rules (CrR) CR 4.6

([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CrR&ruleid=supCrF and CrR 4.7](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CrR&ruleid=supCrF and CrR 4.7))

([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=sup&set=CrR&ruleid=supCrF in the Washington State Rules of Criminal Procedure](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=sup&set=CrR&ruleid=supCrF in the Washington State Rules of Criminal Procedure))

([http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.list&group=sup&set=CrR](http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=sup&set=CrR)).

## **8. Abuse survivors**

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### **I'm a victim of domestic violence. Can they depose my advocate?**

If you're working with a domestic violence advocate, communication with your advocate is confidential. Usually, the advocate can only disclose it **with your consent**. The advocate may disclose confidential communications if not doing so would likely result in a clear, imminent risk of serious injury or death to someone (<http://apps.leg.wa.gov/rcw/default.aspx?cite=5.60.060>).

### **I'm a rape survivor. What if I'm afraid about what they might ask me in a deposition for the criminal trial?**

If you're being deposed in the prosecution of your rapist, the judge may want to prevent or limit questions about your past sexual behavior, such as your marriage or divorce history, your reputation for sexual activity, or attitudes contrary to your community's standards.

If the order requiring your deposition doesn't have these limitations, you can ask for a court order before the deposition. The Defendant may ask such questions only if the Defendant can show that the information they're trying to get directly matters to their case **and** your answering them won't subject you to physical harm, intimidation, or other negative effects.

Judges are sensitive to your privacy. Even if the judge permits such questions in your deposition, you may be able to get an order taking them out of the public record. The judge may also prohibit such questions when you testify at trial.

## I'm a sexual assault survivor. What rights do I have at a deposition for the criminal prosecution?

You have the right to have a sexual assault advocate or other support person with you (<https://app.leg.wa.gov/rcw/default.aspx?cite=70.125.060>) at proceedings about the alleged assault. This includes police and prosecutor interviews and court proceedings such as a deposition.

## 9. Tips for being deposed

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- 1. Always tell the truth.** This is the most important tip. All cases have good and bad sides. Trying to hide the bad things won't help your case. It could even hurt it. The lawyer could use your answers to discredit your later testimony and impeach you. If you're not honest, you might not remember what you said at a deposition. When you must tell your story in court, you might get confused about what you said at the deposition and make mistakes. The other side could use that to convince the judge you're lying. Then the judge won't take seriously anything you say after that.
- 2. Listen.** Make sure you've heard the whole question. Think carefully before answering. Take your time. Don't feel pressured into answering before you're ready. If you don't understand the question, say so. Ask the lawyer to rephrase their question so you understand exactly what they're asking. Ask the lawyer to only ask one question at a time.
- 3. Answer aloud.** Don't shake your head or use other gestures. The court reporter can't record unspoken answers. Speak clearly, at a normal speed. This makes the court reporter's job easier. It will also help you think carefully about your answers.
- 4. Answer only the question asked.** Don't give more information than was asked for.
- 5. Ask for a break if you need one** at any time during the deposition. You might be tired and need to rest. You might need to think about how to answer a hard question. You usually must finish answering the current question before taking a break. When you take a break, you must tell the court reporter you're "off the record." Then the court reporter will stop

transcribing. When coming back from the break, tell the court reporter to go back “on the record.”

6. **No jokes.** Depositions can be tense. Don’t make a joke to cut the tension. Jokes can be misunderstood. It might not look like a joke in the transcript.
7. **Beware of inaccurate assumptions in the questions. Example:** A lawyer asks, “Were you married on January 1, the date that you stole the money?” It might be true that you married on January 1. It might **not** be true that you stole the money. You must be very clear in your answer that the assumption you stole the money is incorrect, but you did marry on that date. Such questions might be more complicated than this example. Think carefully before answering. Take your time. Don’t be afraid to ask the lawyer to rephrase a question so that it’s simpler and only involves one question.
8. **If you don’t know the answer, don’t guess.** Just say that you don’t know or don’t remember. But if you do know, you **must** answer truthfully. If you think you might know, but you’re not sure, give the answer and say you’re not sure your answer is right.
9. **Answer only based on what you personally know to be true.** You might think something someone told you is true, but you don’t know, yourself. In that case, say you don’t know. Don’t give your opinion.
10. **Don’t argue with the lawyer or party asking you questions.** Be calm and confident even if they’re trying to upset you. They’re trying to figure out what kind of courtroom witness you’ll be. If you seem scared, mad, or too emotional, they might try to get you to act badly in front of the judge at trial.
11. **Be careful answering questions that are answers in disguise.** For example: The lawyer might ask you, “Do you still have a drinking problem?” If you answer, “No,” your answer implies that you did have a drinking problem in the past. Be clear about your situation.
12. **Never say “never” or “always.”** You might have forgotten something. It could look like you lied.
13. **If you prepared for the deposition, you can admit to that.** The lawyer might ask if you looked at any documents to get ready for the deposition. If you did, the lawyer has the right to ask for copies of those documents. Tell the lawyer to subpoena you for those documents. Don’t bring anything to the deposition **unless** your subpoena says to. The lawyer can ask for copies of whatever you have with you.
14. **Be ready.** Get plenty of rest before the deposition. Don’t take any medications that might make you sleepy or make thinking and answering clearly harder.
15. **Use simple answers.** Keep answers short and easy to understand. Give only as much information as you need to answer honestly. If the lawyer wants more, make them ask for it.
16. **Keep calm**, even if the lawyer is rude or sarcastic. Stay polite and honest.

17. **Don't be too certain.** If you must give a list to answer a question, answer carefully. If you're not sure the list is complete, say there might be more to add later, but this is all you remember now.
18. **Be thorough.** During the deposition, you might remember more information to an earlier question. Tell the lawyer the information, to make your earlier answer clearer. Make sure they can't use your deposition to make it look like you lied.
19. **Don't guess.** Know the difference between "know" and "surmise." "Surmise" means to guess, assume, or speculate. A lawyer might ask what you surmise about something. Answer only what you know. If they ask you to "surmise" something, say you don't know because they're asking you to guess about something. If a lawyer asks you what you "know" about something, then you should answer truthfully what you know about that thing.
20. **Don't assume anyone is right.** If the other side gives data or evidence to prove a point, don't accept that it's accurate or true unless you personally know it is.

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